

# MEMO ENDORSED

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April 19, 2013

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| USDC SDNY                        |
| DOCUMENT                         |
| <u>VIA FAX (212-805-7949)</u>    |
| ELECTRONICALLY FILED             |
| Honorable <u>P. Kevin Castel</u> |
| <u>DOE</u>                       |
| United States District Court     |
| 500 Pearl Street                 |
| DATE FILED: <u>4-23-13</u>       |
| New York, NY 10007-1312          |

Re: Alexander Interactive, Inc. v. Adorama, Inc., No. 12-cv-6608 (PKC);  
Nonparty Magento, Inc.'s Response to Plaintiffs' April 15, 2013 Letter Request

Your Honor:

On behalf of non-party Rule 45 subpoena subject Magento, Inc. ("Magento"), we respectfully submit this letter in response to Plaintiffs' April 15, 2013 letter seeking, among other things, an order directing Magento to produce witnesses outside this district and asking the Court to conduct an *in camera* review of documents withheld from a production Magento made in California. We were retained by Magento only after receipt of the letter and now respectfully request an opportunity to be heard—whether at a discovery conference or through any subsequent motion practice—for the limited purpose of contesting the Court's jurisdiction to enforce the facially invalid subpoenas.

The subject subpoenas were issued from this Court instead of from the court for the district where the depositions are to be taken or where the documents were to be produced. *See* F.R.C.P. 45(a)(2)(B) and (C). Magento's principal place of business is located in California and all but one of the individuals that Plaintiffs seek to depose are located in California. If Plaintiffs seek to depose these individuals who reside in California, the subpoenas must be issued from the appropriate federal district court in the State of California. The one individual that Plaintiffs seek to depose that is not located in California resides in the Ukraine. Yet, Plaintiffs' deposition subpoenas issued from the Southern District of New York and, as such, are invalid and unenforceable. *See U.S. Bancorp Equip. Finance, Inc. v. Babylon Transit, Inc.*, 270 F.R.D. 136, 139 (E.D.N.Y. 2010) (holding that, even though nonparty had not moved to quash, subpoenas not issued from the court for the district where discovery was to be taken or made were procedurally invalid and unenforceable).

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Similarly, Plaintiffs' subpoena duces tecum was deficient as it was not issued from the district court in Los Angeles, California, where the production was to be made. Magento raised various objections to the subpoena and informed counsel for Plaintiffs that the subpoena was procedurally deficient and that any disputes arising out of the subpoena had to be adjudicated by a California court. Without waiving any such objections, Magento has voluntarily produced approximately 60,000 documents to Plaintiffs.

The discovery sought by Plaintiffs against non-party Magento, including but not limited to the multiple day depositions of its employees, is unreasonable. Respectfully, however, this Court is not the proper venue for consideration of that issue or the issues raised in Plaintiffs' letter.

Respectfully submitted,



Patrick J. Sweeney

cc: All counsel of record

**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to Title 28 U.S.C. §1746, that on April 19, 2013, I served a true and correct copy of the attached Letter, by fax to the following counsel of record:

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I declare under penalty of perjury that the foregoing is true and correct.  
Executed April 19, 2013



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